

## § 1.401(a)(9)-1

## 26 CFR Ch. I (4-1-10 Edition)

### § 1.401(a)(9)-1 Minimum distribution requirement in general.

Q-1. What plans are subject to the minimum distribution requirement under section 401(a)(9), this section, and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9?

A-1. Under section 401(a)(9), all stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to required minimum distribution rules. See this section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 for the distribution rules applicable to these plans. Under section 403(b)(10), annuity contracts or custodial accounts described in section 403(b) are subject to required minimum distribution rules. See § 1.403(b)-6e for the distribution rules applicable to these annuity contracts or custodial accounts. Under section 408(a)(6) and 408(b)(3), individual retirement plans (including, for some purposes, Roth IRAs under section 408A) are subject to required minimum distribution rules. See § 1.408-8 for the distribution rules applicable to individual retirement plans and see § 1.408A-6 for the distribution rules applicable to Roth IRAs under section 408A. Under section 457(d)(2), certain deferred compensation plans for employees of tax exempt organizations or state and local government employees are subject to required minimum distribution rules.

Q-2. Which employee account balances and benefits held under qualified trusts and plans are subject to the distribution rules of section 401(a)(9), this section, and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9?

A-2. (a) *In general.* The distribution rules of section 401(a)(9) apply to all account balances and benefits in existence on or after January 1, 1985. This section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

(b) *Beneficiaries.* (1) The distribution rules of this section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 apply to account balances and benefits held for the benefit of a beneficiary for calendar years beginning on or after January 1, 2003, even if the employee died prior to January 1, 2003. Thus, in the case of an em-

ployee who died prior to January 1, 2003, the designated beneficiary must be redetermined in accordance with the provisions of § 1.401(a)(9)-4 and the applicable distribution period (determined under § 1.401(a)(9)-5 or 1.401(a)(9)-6, whichever is applicable) must be reconstructed for purposes of determining the amount required to be distributed for calendar years beginning on or after January 1, 2003.

(2) A designated beneficiary that is receiving payments under the 5-year rule of section 401(a)(9)(B)(ii), either by affirmative election or default provisions, may, if the plan so provides, switch to using the life expectancy rule of section 401(a)(9)(B)(iii) provided any amounts that would have been required to be distributed under the life expectancy rule of section 401(a)(9)(B)(iii) for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period determined under A-2 of § 1.401(a)(9)-3.

(c) *Trust documentation.* If a trust fails to meet the rule of A-5 of § 1.401(a)(9)-4 (permitting the beneficiaries of the trust, and not the trust itself, to be treated as the employee's designated beneficiaries) solely because the trust documentation was not provided to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died, and such documentation is provided to the plan administrator by October 31, 2003, the beneficiaries of the trust will be treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9).

(d) *Special rule for governmental plans.* Notwithstanding anything to the contrary in this A-2, a governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in § 1.457-2(f), is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

Q-3. What specific provisions must a plan contain in order to satisfy section 401(a)(9)?

A-3. (a) *Required provisions.* In order to satisfy section 401(a)(9), the plan must include the provisions described in this paragraph reflecting section 401(a)(9). First, the plan must generally set forth the statutory rules of section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G). Second, the plan must provide that distributions will be made in accordance with this section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9. The plan document must also provide that the provisions reflecting section 401(a)(9) override any distribution options in the plan inconsistent with section 401(a)(9). The plan also must include any other provisions reflecting section 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Optional provisions.* The plan may also include written provisions regarding any optional provisions governing plan distributions that do not conflict with section 401(a)(9) and the regulations thereunder.

(c) *Absence of optional provisions.* Plan distributions commencing after an employee's death will be required to be made under the default provision set forth in § 1.401(a)(9)-3 for distributions unless the plan document contains optional provisions that override such default provisions. Thus, if distributions have not commenced to the employee at the time of the employee's death, distributions after the death of an employee are to be made automatically in accordance with the default provisions in A-4(a) of § 1.401(a)(9)-3 unless the plan either specifies in accordance with A-4(b) of § 1.401(a)(9)-3 the method under which distributions will be made or provides for elections by the employee (or beneficiary) in accordance with A-4(c) of § 1.401(a)(9)-3 and such elections are made by the employee or beneficiary.

[T.D. 8987, 67 FR 18994, Apr. 17, 2002, as amended by T.D. 9130, 69 FR 33293, June 15, 2004; T.D. 9340, 72 FR 41159, July 26, 2007; T.D. 9459, 74 FR 45994, Sept. 8, 2009]

#### § 1.401(a)(9)-2 Distributions commencing during an employee's lifetime.

Q-1. In the case of distributions commencing during an employee's lifetime, how must the employee's entire interest be distributed in order to satisfy section 401(a)(9)(A)?

A-1. (a) In order to satisfy section 401(a)(9)(A), the entire interest of each employee must be distributed to such employee not later than the required beginning date, or must be distributed, beginning not later than the required beginning date, over the life of the employee or joint lives of the employee and a designated beneficiary or over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the designated beneficiary.

(b) Section 401(a)(9)(G) provides that lifetime distributions must satisfy the incidental death benefit requirements.

(c) The amount required to be distributed for each calendar year in order to satisfy section 401(a)(9)(A) and (G) generally depends on whether a distribution is in the form of distributions under a defined contribution plan or annuity payments under a defined benefit plan or under an annuity contract. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) from an individual account under a defined contribution plan, see § 1.401(a)(9)-5. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) in the case of annuity payments from a defined benefit plan or an annuity contract, see § 1.401(a)(9)-6.

Q-2. For purposes of section 401(a)(9)(C), what does the term *required beginning date* mean?

A-2. (a) Except as provided in paragraph (b) of this A-2 with respect to a 5-percent owner, as defined in paragraph (c) of this A-2, the term *required beginning date* means April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan.